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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NOV 20 2007

T: EP: RA: T3

Uniform Issue List: 408.01-00

Legend:

Decedent A =

Taxpayer B =

Trust C =

State F =

Date L =

Date M =

Date N =

IRA X =

IRA Y =

Value 1 =

Value 2 =

Dear :

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated , concerning the proper rollover treatment of a distribution from Decedent A's individual retirement Accounts (IRA X and IRA Y) under section 408d(3) of the Internal Revenue Code (Code). Correspondence dated , and supplemented the request.

Your authorized representative has submitted the following facts and representations:

Decedent A was born on Date L, 1946, and died on Date M, 2006 while residing in State F. You, Taxpayer B, were married to Decedent A at the time of his death.

At his death, Decedent A maintained IRA X and IRA Y. The date of death value of IRA X was Value 1, and the date of death value of IRA Y was Value 2. No distributions from either IRA X or IRA Y had been taken prior to the date of Decedent A's death.

As shown by beneficiary designations on file with the Internal Revenue Service, Decedent A named Trust C as the beneficiary of his IRA X and his IRA Y. Trust C is dated Date N, 1999. Relevant provisions of Trust C provide that Taxpayer B became the sole trustee of Trust C at the death of Decedent A.

Article II of Trust C provides, in relevant part, that Taxpayer B may revoke Trust C at any time. In case of revocation, the Trust C trustee is to pay Taxpayer B or transfer to Taxpayer B as she directs in the instrument of revocation all of the Trust C estate. Article III of Trust C provides, in relevant part, that during Taxpayer B's lifetime, "the net income and principal of Trust T shall be paid to me (Taxpayer B) for my (Taxpayer B's) benefit as I direct the trustee".

Pursuant to Article III of Trust C, you, Taxpayer B, as trust beneficiary, intend, to direct you, as trustee of Trust C, to pay all amounts remaining in IRA X and IRA Y to the trust after which the trustee is to pay them to you as trust beneficiary. Within 60 days of the date the IRA X and IRA Y amounts are received by the Trust C trustee, Taxpayer B, as trust beneficiary, will contribute them to one or more individual retirement arrangements ("IRAs") set up and maintained in the name of Taxpayer B.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That neither IRA X nor IRA Y will be treated as an inherited IRA, as that term is defined in Code section 408(d)(3)(C), with respect to Taxpayer B;
2. that Taxpayer B will be treated, for purposes of Code section 408(d)(3) as the payee or distributee of amounts distributed from Decedent A's IRA X and from his IRA Y;

3. that, pursuant to Code section 408(d)(3)(A)(i), Taxpayer B will be eligible to roll over the proceeds from IRA X and IRA Y into one or more IRAs described in Code section 408 set up and maintained in her own name as long as said rollover(s) occur no later than 60 days from the date(s) said proceeds are received by Taxpayer B in her capacity as trustee of Trust C; and
4. that Taxpayer B will not be required to include in her gross income for federal tax purposes proceeds which are distributed from either IRA X or IRA Y to Trust C, subsequently distributed to Taxpayer B as trust beneficiary, and finally transferred into one or more IRAs maintained in her name within 60 days as measured from the date(s) received by the trustee of Trust C, in either the calendar year such assets are distributed or the calendar year in which they are received by Taxpayer B.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a

surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

On April 17, 2002, final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

As specifically stated in the "Final" regulations, a surviving spouse may not elect to treat the IRA of a decedent as his/her own if a trust is the beneficiary of the IRA even if the spouse is both the sole trustee of the trust and also the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

In this case, the IRA X and IRA Y account balances remaining at Decedent A's death are payable to Trust C. Taxpayer B, Decedent A's surviving spouse, is the sole trustee of Trust C, and the sole beneficiary of Trust C with the right under Article III of Trust C to demand payment of any part of the income or principal of Trust C. As beneficiary of Trust C, Taxpayer B will demand payment of the entire amount standing in both IRA X and IRA Y. Pursuant to said demand, the trustee of Trust C will request distribution of the IRA X and IRA Y assets be made to Trust C. Subsequently, the trustee of Trust C will pay said IRA amounts to Taxpayer B as beneficiary of Trust C. Taxpayer B will then contribute said IRA amounts into one or more IRAs set up and maintained in her name. Said rollover (s) will occur no later than 60 days from the date(s) the IRA distributions are received by the Trust C trustee.

Under the facts stated above, you, Taxpayer B, are to be treated as the payee and beneficiary of IRA X and of IRA Y for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude as follows:

1. That neither IRA X nor IRA Y will be treated as an inherited IRA, as that term is defined in Code section 408(d)(3)(C), with respect to Taxpayer B;
2. that Taxpayer B will be treated, for purposes of Code section 408(d)(3) as the payee or distributee of amounts distributed from Decedent A's IRA X and from his IRA Y;
3. that, pursuant to Code section 408(d)(3)(A)(i), Taxpayer B will be eligible to roll over the proceeds from IRA X and IRA Y into one or more IRAs described in Code section 408 set up and maintained in her own name as long as said rollover(s) occur no later than the 60 days from the date(s) said proceeds are received by Taxpayer B in her capacity as trustee of Trust C; and
4. that Taxpayer B will not be required to include in her gross income for federal income tax purposes proceeds which are distributed from either IRA X or IRA Y to Trust C, subsequently distributed to Taxpayer B as trust beneficiary, and finally transferred into one or more IRAs maintained in her name within 60 days as measured from the date(s) received by the trustee of Trust C, in either the calendar year such assets are distributed or the calendar year in which they are received by Taxpayer B.

This ruling letter assumes that IRA X and IRA Y either are or were qualified under Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA(s) to be set up by you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, it assumes that your rollovers of the IRA X and IRA Y distributions will be made within the time frame referenced in Code section 408(d)(3)(A)(i).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

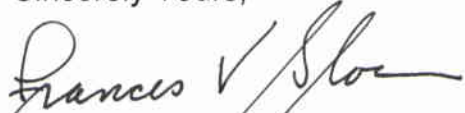
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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call
- (not a toll free number).

(ID) at ()

Sincerely Yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

CC: